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8 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA  
9 BUTTE DIVISION

10 KEVIN BRIGGS,

11 Plaintiff,

12 vs.

13 GALLATIN COUNTY SHERIFF  
14 OFFICE AND GALLATIN COUNTY  
15 DETENTION CENTER; BRIAN  
16 GOOTKIN, SHERIFF IN HIS  
17 OFFICIAL CAPACITY; LIEUTENANT  
18 JASON JARRETT AS AN  
19 INDIVIDUAL AND IN HIS OFFICIAL  
20 CAPACITY AS JAIL  
21 ADMINISTRATOR; SERGEANT  
22 NICHOLAS WALISOR AS AN  
23 INDIVIDUAL AND IN HIS OFFICIAL  
24 CAPACITY AS DETENTION  
25 OFFICER; CORPORAL DAVID  
26 LAUCHNOR AS AN INDIVIDUAL  
27 AND IN HIS OFFICIAL CAPACITY  
28 AS DETENTION OFFICER; JOHN  
DOE(S) 1-8 AS INDIVIDUALS AND  
IN THEIR OFFICIAL CAPACITY AS  
DETENTION OFFICERS

Defendant

Case No.: CV-18-10-BV-BMMJCL

BRIEF IN SUPPORT OF  
UNOPPOSED MOTION FOR  
EXTENSION OF TIME TO SERVE  
AND STATEMENT OF GOOD  
CAUSE

1  
2 Plaintiff, by and through his counsel of record, moves to extend time for  
3 service under Rule 4(m) of the Federal Rules of Civil Procedure to July 1, 2018.  
4  
5 Plaintiff provides the following Brief in Support and statement of Good Cause.

6 **Legal Authority**

7 “If a defendant is not served within 90 days after the complaint is filed, the  
8 court--on motion or on its own after notice to the plaintiff--must dismiss the action  
9 without prejudice against that defendant or order that service be made within a  
10 specified time. But if the plaintiff shows good cause for the failure, the court must  
11 extend the time for service for an appropriate period.” Fed. R. Civ. P. 4.  
12

13  
14 Rule 4(m) does not tie the hands of the district court after the time for  
15 service has expired; rather, the rule explicitly permits a district court to grant an  
16 extension of time to serve the complaint after the 90-day period, in making that the  
17 decision the court may consider factors “like a statute of limitations bar, prejudice  
18 to the defendant, actual notice of a lawsuit, and eventual service.” *Efaw v.*  
19

20 *Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007). “At a minimum, “good cause”  
21 means excusable neglect. A plaintiff may also be required to show the following:  
22 (a) the party to be served personally received actual notice of the lawsuit; (b) the  
23 defendant would suffer no prejudice; and (c) plaintiff would be severely prejudiced  
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1 if his complaint were dismissed.” *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir.  
2 1991).

### 3 4 **Relevant Timeline Facts**

5 In December of 2017, Counsel for the Plaintiff forwarded a copy of the  
6 complaint and “demand letter” to each of the named defendants. On January 3,  
7 2018 counsel for the Plaintiff received a letter from Cal Stacy of the law firm  
8 Stacy, Funyak & Kautz, Billings, Montana. Mr. Stacy represented that he would be  
9 representing the Defendants in this matter. Mr. Stacy requested time to review the  
10 complaint prior to making any response to the Plaintiff’s demand. On January 15,  
11 Plaintiff received a letter from Mr. Stacy requesting time to investigate the claim  
12 and provide a more formal response to the allegations contained in the complaint.  
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15 Both parties agreed that if a resolution could be met it would be beneficial  
16 for both parties as it would save unnecessary litigation, however they also  
17 acknowledged the Defendant’s right to examine relevant factual information  
18 related to the claim. On January 31, 2018 Mr. Stacy requested the parties obtain  
19 Confidential Criminal Justice Information (CCJI) regarding the Plaintiff’s criminal  
20 charges which would contain facts relevant to the claims and defenses in the  
21 matter. Plaintiff provided Mr. Stacy with a Release of Information form related to  
22 the CCJI and Mr. Stacy, through the Gallatin County Attorney Office, filed a  
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1 petition with the Gallatin County District Court to obtain the CCJI. (Montana  
2 Eighteenth Judicial District Court, Gallatin County, DV-18-202 B).

3  
4 On February 1<sup>st</sup>, 2018, Plaintiff filed the complaint in this matter to preserve  
5 a claim under the statute of limitations. On March 19<sup>th</sup> 2018, the 18<sup>th</sup> Judicial  
6 District Court issued an order to disseminate the CCJI. On April 18<sup>th</sup>, Mr. Stacy  
7 informed Plaintiff's attorney that he had received the CCJI and would be providing  
8 copies to Plaintiff's counsel. At that time, Plaintiff also forwarded to Defendant's  
9 counsel copies of hearing transcripts and audio and video information pertinent to  
10 the case. After review of the material, in mid-May, Defendant's informed Plaintiff  
11 that they could not come to a resolution at this time and he would accept service of  
12 the complaint for all Defendants. Defendant was provided Waiver of Service  
13 forms and returned them to Defendant in June of 2018.  
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### 18 Argument

19 If the Plaintiff shows good cause for service outside the 90-day period set  
20 forth in Rule 4(m) of the Federal Rules of Civil Procedure, the Court must extend  
21 service for an appropriate period." At a minimum good cause means excusable  
22 neglect. The factors to consider are: (a) the party to be served personally received  
23 actual notice of the lawsuit; (b) the defendant would suffer no prejudice; and (c)  
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1 plaintiff would be severely prejudiced if his complaint were dismissed.” *Boudette*  
2 *v. Barnette*, 923 F.2d 754, 756 (9th Cir. 1991).

3  
4 As a threshold matter, Attorney for the Plaintiff accepts his own roll in  
5 failing to serve the Defendants pursuant to the criteria set forth in Rule 4.  
6  
7 Plaintiff’s attorney was laboring under the false belief that he had more time to  
8 serve based on the old Rule 4 which has been amended. Further, Plaintiff had not  
9 completed his CM/ECF profile until he filed the Waiver of Summons and did not  
10 receive courts notices. Mail was sent from the court, but it was delivered to the  
11 Attorney’s old address and returned as undeliverable. Upon discovery of his error,  
12 Mr. Biddulph promptly reached out to Mr. Stacy to discuss his mistake and Mr.  
13 Stacy informed him he would not oppose this motion. Mr. Biddulph accepts his  
14 error; however, he respectfully requests this court not punish his client for his  
15 mistake.  
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19 Notwithstanding Mr. Biddulph’s mistake, good cause exists to extend the  
20 time for service in accordance with the factors set forth above:  
21

22 **A) The party to be served personally received actual notice of the**

23 **lawsuit.** The Defendant’s in this matter personally received a copy of the  
24 proposed complaint in December of 2017, and their attorney, Mr. Stacy  
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1 received a copy of the complaint and was notified when the complaint  
2 was filed in February of 2018.  
3

4 **B) The defendant would suffer no prejudice.** The Plaintiff and Defendant  
5 have been actively engaged in seeking a non-litigative resolution to this  
6 matter and have participated in an unopposed motion to the Gallatin  
7 County District Court to obtain CCJI relevant to the evaluation or  
8 litigation of the case. The parties have remained in contact with one-  
9 another and Plaintiff has provided the Defendants with discoverable  
10 information in his possession. The Defendant's have been made aware of  
11 any events pertinent to the case and the Defendant's attorney volunteered  
12 to accept service on his client's behalf. Despite the signing of the waiver  
13 after the 90-day period, the Defendants do not oppose this motion. Based  
14 on these facts, the defendant has suffered no prejudice to his case.  
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19 **C) Plaintiff would be severely prejudiced if his complaint were**  
20 **dismissed.** The subject of this complaint occurs over a period of time  
21 while Mr. Briggs was detained in the Gallatin County Detention Center  
22 beginning in 2014 and ending in 2015. Given the nature of the case, the  
23 statute of limitations could expire in this matter depending on the  
24 calculation of the date of injury and any facts or circumstances which  
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1 could potentially toll the statute of limitations. While Plaintiff believes  
2 he could, in effect, dismiss and re-serve the pending complaint his case  
3 could be prejudiced due to the statute of limitations expiring. Expiration  
4 of the Statute of Limitations would severely prejudice Plaintiff's case.  
5 Further, dismissal and re-service would be a waste of court resources  
6 where the Defendant has agreed to accept service and not oppose this  
7 motion.  
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11 **D) Eventual Service.** As evidenced by the waivers previously filed with this  
12 court, service was completed on the Defendant's in this matter. Attorney  
13 for the Defendants do not oppose this motion.  
14

15 It is clear from the facts of this case, and the Defendant's willingness to not  
16 oppose this motion, good cause exists to extend the time of service of the  
17 complaint in this matter. The Defendant's have received personal notice of this  
18 complaint, their case has not been prejudiced and both parties have already  
19 engaged in collaborative discovery, and the Plaintiffs case would be severely  
20 prejudiced should the matter be dismissed. Further, the Defendants do not oppose  
21 this motion.  
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### 25 Conclusion

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1 For the foregoing reasons Plaintiff respectfully requests this court find good  
2 cause exists under Rule 4(m) to extend the time for service of the complaint to July  
3 1, 2018. Plaintiff has contacted the Attorney for the Defendants in this matter and  
4 they do not oppose this motion.  
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8 Dated this 20 of June, 2018.  
9

10 /S/ Daniel V. Biddulph

11 Daniel V. Biddulph, Attorney for  
12 Plaintiff  
13 Ferguson Law Office, PLLC  
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## CERTIFICATE OF SERVICE

I hereby certify that on 20 Day of June, 2018 a copy of the foregoing document was mailed to the following persons:

Calvin Stacey  
Stacey, Funyak & Kautz  
Attorney for Defendants  
PO Box 1139  
Billings MT 59103  
(US Mail)

By: /s/ Daniel V. Biddulph  
Daniel V. Biddulph, Esq.  
Ferguson Law Office, PLLC  
Counsel for Defendant